


Town of Amherst
Zoning Board of Appeals
SPECIAL PERMIT

The Amherst Zoning Board of Appeals hereby grants a Special Permit, ZBA FY2014-00005, to modify conditions # 2, 3, and 13 to change the approved parking and remove a requirement for owner occupancy, at 98 Spring Street (Map 14B, Parcel 36, R-G Zoning District), with the following conditions:

1. All other conditions of ZBA FY2010-00008 remain in effect.
2. There shall be no more than four vehicles parked in the driveway on a regular basis, as shown on the approved parking plan. If additional parking is needed, the two spaces in the garage shall be made available for parking.
3. No more than four unrelated individuals in the main house and two in the carriage house, cite definition sections.
4. Any complaints regarding the property shall be handled in accordance with the approved Complaint Response Plan.
5. A Resident Manager is required to reside on the premises at all times. The current Resident Manager shall be as identified within the approved Management Plan. Upon a change in the Resident Manager, the owners shall present information regarding the new Resident Manager to the Board for review and approval at a public meeting. The purpose of the meeting shall be for the Board to determine that the responsibilities of the manager, as defined in the Zoning Bylaw, are being met.
6. As listed in condition # 14 of ZBA FY2010-00008, this permit shall expire upon change of ownership of the property.


Eric Beal
Amherst Zoning Board of Appeals

1/30/14
DATE

Town of Amherst
Zoning Board of Appeals - Special Permit

DECISION

Applicant/Owner: Alex Hiam, 57 Woodside Ave, Amherst, MA 01002

Date application filed with the Town Clerk: September 24, 2013

Nature of request: For a Special Permit to modify and/or remove conditions 2, 3, and 13 of ZBA FY2010-00008 to allow the property, containing a Converted Dwelling, to become non-owner occupied; and to allow alterations to the approved parking plan, under Section 10.33 of the Zoning Bylaw

Address: 98 Spring Street (Map 14B, Parcel 36, R-G Zoning District)

Legal notice: Published on September 25, 2013 and October 2, 2013 in the Daily Hampshire Gazette and sent to abutters on September 24, 2013

Board members: Eric Beal, Tom Ehrgood, Mark Parent

Staff members: Jeff Bagg, Senior Planner

Submissions:

- Application, filed with Town Clerk on September 24, 2013
- Management Plan (including parking plan)
- Complaint Response Plan
- Revised Parking Plan (x2)

Submitted by Town staff:

- ZBA FY2010-00008, with approved plans

Site Visit: October 8, 2013

Tom Ehrgood met the applicant, Alex Hiam, on-site. They observed the location of the property on the north side of Spring Street, and the following:

- The exterior of the large existing single family dwelling and detached structure converted and used a second dwelling unit. The existing black top driveway, landscaping, walkways and turnaround areas all in good condition.
- The interior of the single family dwelling including one bedroom on the first floor; three bedrooms on the second floor; and the third floor which was a large open room used as a children's playroom.

Public Hearing: October 10, 2013

A set of sketch floor plans of the first and second floor of the dwelling were provided. The applicants, Alex and Deirdre Hiam presented the application in terms of the plans, summarized as follows:

- In 2004 they purchased the property and converted it from a four unit dwelling with three kitchens to a single family dwelling for their family.

- In 2010 they applied for and received a Special Permit to convert the existing detached garage into a studio apartment for rental. At that time, they were represented by the contractor doing the work and were not aware of the condition which required that they as owners reside on the premises.
- In 2012, a series of personal circumstances caused them to sell and they rented the single family dwelling to a family and rented the detached carriage house to a University of Massachusetts professor.
- They are seeking permission to remove the requirement for owner occupancy to allow both the single family dwelling and the carriage house to be rented. The single family dwelling was described as a high end rental that had been recently renovated and is ideally suited for rent by a traditional family.
- They are also seeking permission to change the approved parking plan to more accurately reflect current conditions and to remove a requirement for a screening fence along the west property line.

The Board discussed the parking plan. The change is proposed to more accurately reflect the actual way tenants are parking. Specifically, the proposed plan would allow vehicles to pull straight up the driveway and park rather than having formal parking spaces which face the vehicles west. The number of exterior spaces remains as four parking spaces with two additional spaces potentially available within the detached garage. The proposed parking plan would eliminate the need for a fence for screening along the west property line.

The Board discussed vehicle maneuvering and screening for headlights. It was noted that vehicles could back down the driveway to a turnaround located near Spring Street, which was acceptable to the Board. However, it was noted that vehicle headlights would shine directly onto the adjacent single family dwelling. The Board determined that some type of vegetative screening should be installed to prevent the glare of headlights casting onto that dwelling and that a plan showing the proposed vegetation should be provided.

The Board discussed the criteria under Section 3.3241, subsection 6, of the Converted Dwelling section:

The proposed conversion shall be suitably located in the neighborhood in which it is proposed, as deemed appropriate by the Special Permit Granting Authority. The conversion, if in a residential district, shall either: a) be located in an area that is close to heavily traveled streets, close to business, commercial and educational districts, or already developed for multi-family use and shall require owner-occupancy or a Resident Manager (see definition) in one of the units; or b) be from one to two units, one unit of which shall be and shall remain owner-occupied, a requirement which shall be made a condition of any Special Permit issued in such an instance.

The Board found that the proposal is close to heavily traveled streets, close to business, commercial and educational districts and is already developed for multifamily use. The Board cited the apartment building to the north; an owner occupied two family, commercial office space, Amherst College offices and other residential uses in the immediate area.

The Board discussed the requirement for a Resident Manager. The Board discussed how it would be determined that a Resident Manager will be able to satisfy the required functions. The Board discussed what would happen if the Resident Manager changes. Generally, the Board agreed that a new manager may have to be reviewed by the Board at a public meeting. The Board referred to the definition, under Section 12.38, as follows:

Resident Manager: A live-in resident of a rental residential use qualified and responsible for implementation of the property management plan and for managing and coordinating the maintenance, housekeeping, and administrative duties for the rental units under their charge.

The Board discussed the potential maximum occupancies of both units. As noted in the 2010 Special Permit, the detached carriage house is limited to two unrelated individuals, while it was noted that there is no limit on a traditional family. The single family dwelling would be limited to four unrelated individuals while there is no limit on a traditional family.

The Board discussed whether or not the permit should expire upon change of ownership. The Board members were split on whether or not this condition was applicable. There was concern expressed with the condition noting that a new owner would be required to secure the Special Permit prior to continuing the use of the detached carriage house as a dwelling. The other argument was that expiration of permits allows the Board and the Town an opportunity to review whether any relevant laws have changed or come into play.

No members of the public spoke regarding the proposal.

Mr. Beal MOVED to continue the evidentiary portion of the public hearing to November 12, 2013. Mr. Parent seconded the motion and the Board VOTED unanimously to continue the public hearing.

Public Hearing: November 12, 2013:

A landscape/screening plan, dated November 6, 2013, was submitted. However, the applicant was not present and Mr. Beal MOVED to continue the evidentiary portion of the public hearing to December 12, 2013. Mr. Parent SECONDED the motion and the Board VOTED to continue the public hearing.

Public Hearing: December 12, 2013:

The Board, citing a lack of time, decided to continue the matter to another date. Mr. Parent MOVED to continue the evidentiary portion of the public hearing to January 9, 2014. Mr. Beal SECONDED the motion and the Board VOTED unanimously to continue the hearing.

Public Hearing: January 9, 2014:

The applicant, Mr. Hiam, was accompanied by the owner of the adjacent property at 90 Spring Street, Daniel Gordon.

The following information was reviewed and/or discussed:

- A landscape/screening plan, dated November 6, 2013
- Two emails from Daniel Gordon, dated January 8 and 9, 2014
- An annotated photograph showing headlights on the adjacent property

Mr. Hiam referred to the annotated photograph and the previously submitted landscape/screening plan. He explained that, in consultation with the abutting property owner, Mr. Gordon, they determined that the actual conditions on the ground are such that no additional landscaping/screening is necessary. Specifically, he noted that the photograph depicts a car backing into the turnaround at dusk with its headlights on and facing the adjacent property to the west. The photograph shows that the headlights do not cast into or as high as the first floor windows. He requested that the landscaping not be required, as it is not necessary, and the abutting property owner does not feel it is needed, as indicated in the emails.

The Board reviewed the request and determined that the following is being considered:

- Removal of condition #13 requiring owner occupancy
- Removal of condition # 3 for a fence at the north and east edge of the parking area
- Modify condition # 2 to allow a reduction and reconfiguration of the parking plan
- The other conditions of the 2010 Special Permit remain in effect

The Board discussed whether or not the permit should expire upon change of ownership. Mr. Beal stated that it was a condition of the 2010 permit and that it should be maintained as a condition. Mr. Parent opposed this position, stating that the use is appropriate in this area and that the expiration condition will deter a new owner from enhancing the property and is detrimental. Mr. Parent and Mr. Ehrgood stated that they will vote in favor of the condition to avoid a vote that was not unanimous, which would result in denial of the application.

Specific Findings:

The Board found under Section 10.38 of the Zoning Bylaw, Specific Findings required of all Special Permits, that:

10.380 & 10.381 - *The proposal is suitably located in the neighborhood in which it is proposed and is compatible with existing Uses and other Uses permitted by right in the same District.* The proposal does not change the number of dwelling units approved in the 2010 permit. The use of the property as two units is suitably located and compatible with the existing uses because there are numerous other properties containing multi-family uses in the neighborhood. The removal of the owner occupancy condition is acceptable due to the provisions for a Resident Manager, which was made a requirement of the Zoning Bylaw in April 2013. A condition of the permit requires the submission of updated information if the Resident Manager changes.

10.382 & 10.383 - *The proposal would not constitute a nuisance due to air and water pollution, flood, noise, odor, dust, vibration, lights, or visually offensive structures or site features; the proposal would not be a substantial inconvenience or hazard to abutters, vehicles or pedestrians.* The proposal will maintain the limit of two (2) tenants in the detached dwelling and a Resident Manager in the main house. The reconfiguration of the parking is minimal and the adjacent owner does not require a fence or any screening from headlights.

10.384 & 10.385 - *Adequate and appropriate facilities would be provided for the proper operation of the proposed use and reasonably protects the adjoining premises against detrimental or offensive uses on the site, including air and water pollution, flood, noise, odor, dust, vibration, lights or visually offensive structures or site features.* The updated Management Plan, provisions for a Resident Manager, complaint response plan, and local owner are sufficient to mitigate any potential negative impacts associated with the use as a non-owner occupied property.

10.386 & 10.387 - The proposal ensures that it is in conformance with the Parking and Sign regulations (Articles 7 and 8, respectively) of this Bylaw and provides convenient and safe vehicular and pedestrian movement within the site, and in relation to adjacent streets, property or improvements. The new parking plan provides four (4) parking spaces, pursuant to Section 7.0000 of the Zoning Bylaw for two units. Additionally, it has been determined that no screening from headlights is necessary for the abutting property to the west.

10.398 - The proposal is in harmony with the general purpose and intent of this Bylaw, and the goals of the Master Plan. The proposal removes the requirement for owner occupancy based on the provision that a Resident Manager is designated and maintained on the property. The revised parking arrangement more accurately reflects the current use and the removal of screening requirements is agreeable to the abutter.

Zoning Board Decision


ERIC BEAL


TOM EHRCOOD


MARK PARENT 

FILED THIS 31st day of Jan., 2014 at 8:58 am,
in the office of the Amherst Town Clerk Susan Audette.
TWENTY-DAY APPEAL period expires, February 20th 2014.
NOTICE OF DECISION mailed this 31 day of January, 2014
to the attached list of addresses by Jeffrey R. Bagg, for the Board.
COPY OF NO APPEAL issued this _____ day of _____, 2014.
NOTICE OF PERMIT or Variance filed this _____ day of _____, 2014,
in the Hampshire County Registry of Deeds.

**BOARD OF APPEALS
AMHERST, MASSACHUSETTS
RECORD OF APPEALS AND DECISION RENDERED**

Petition of Alex Hiam

For a Special Permit, ZBA FY2014-00005, to modify conditions # 2, 3, and 13 to change the approved parking and remove a requirement for owner occupancy, with conditions

On the premises of 98 Spring Street

At or on Map 14B, Parcel 36, R-G Zoning District

NOTICE of hearing as follows mailed (date) September 24, 2013
to attached list of addresses and published in the Daily Hampshire Gazette
dated September 25, 2013 and October 2, 2013

Hearing date and place October 10, 2013, November 12, 2013, December 12, 2013 & January 9, 2014 (Town Hall)

The Amherst Zoning Board of Appeals will meet on Thursday, October 10, 2013*, at 6:30 PM, in the TOWN ROOM, Town Hall, to conduct the following business: PUBLIC HEARING: ZBA FY2014-00005 - Alex Hiam - For a Special Permit to modify and/or remove conditions 13 and 14 of ZBA FY2010-00008 to allow the property containing a Converted Dwelling, to become non-owner occupied; and to allow alterations to the approved parking plan, under Section 10.33 of the Zoning Bylaw, at 98 Spring Street (Map 14B, Parcel 36, R-G Zoning District) ZBA FY2014-00006 - Paul DiBenedetto - For a Special Permit to structurally alter and enlarge a non-conforming building; and to create a non-owner occupied two-family dwelling (duplex), by connecting two existing structures, under Sections 9.22 and 3.3211 of the Zoning Bylaw, at 236/288 Belchertown Road (Map 18A, Parcel 26, R-N, R-O and RLD/FC Zoning Districts) ERIC BEAL, CHAIR AMHERST ZONING BOARD OF APPEALS September 25 October 02 3272157
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SITTING BOARD and VOTE TAKEN:

To grant a Special Permit, ZBA FY2014-00005, to modify conditions # 2, 3, and 13 to change the approved parking and remove a requirement for owner occupancy, with conditions.

Eric Beal -- Yes

Mark Parent -- Yes

Tom Ehrgood - Yes

DECISION: APPROVED with conditions as stated in permit

THE COMMONWEALTH OF MASSACHUSETTS
AMHERST

City or Town
NOTICE OF SPECIAL PERMIT
Special Permit
(General Laws Chapter 40A)

Notice is hereby given that a Special Permit has been granted

To Alex Hiam
Address 57 Woodside Avenue
City or Town Amherst, MA 01002

Identify Land Affected: 98 Spring Street
(Map 14B, Parcel 36, R-G Zoning Districts)

By the **Town of Amherst Zoning Board of Appeals** affecting the rights of the owner
with respect to the use of the premises on

98 Spring Street Amherst
Street City or Town

The record of title standing in the name of
98 Spring Street LLC
Name of Owner

Whose address is 15 A Eames Avenue Amherst MA 01002
Street City or Town State Zip Code

By a deed duly recorded in the

Hampshire County Registry of Deeds: Book 11115 Page 83
or

Hampshire Registry District of the Land Court, Certificate No. _____,
Book _____, Page _____

The decision of said Board is on file, with the papers, in ZBA FY2014-00005
In the office of the Town Clerk Sandra J. Burgess

Certified this _____ day of _____

Board of Appeals:

[Signature] Chairman
(Board of Appeals)
Mark Parent Clerk
(Board of Appeals) MP

_____ at _____ o'clock and _____ minutes _____ m.
Received and entered with the Register of Deeds in the County of Hampshire
Book _____ Page _____

ATTEST _____

Register of Deeds
Notice to be recorded by Land Owner

Town of Amherst Abutter List

Parcel ID	Parcel Address	Owner1	Owner2	Address	City/Zip
14B-41	11 DICKINSON ST	WANG, KATHLEEN		11 DICKINSON ST	AMHERST, MA 01002
14B-58	12 DICKINSON ST	DUNSTONE LTD PARTNERSHIP		12 DICKINSON ST	AMHERST, MA 01002
14B-57	18-18 DICKINSON ST	SIMON, BARRY & SAHNER, MINDI		18 DICKINSON ST	AMHERST, MA 01002
14B-40	19 DICKINSON ST	CROSSMAN, MARJORIE R		19 DICKINSON ST	AMHERST, MA 01002
14B-56	24 DICKINSON ST	SCANDINAVIAN SEMINAR	C/O HAWLEY, BARBARA L & LUMLEY, JAMES	24 DICKINSON ST	AMHERST, MA 01002
14B-53	34 DICKINSON ST	CORNELL, MATTHEW & MARY B		34 DICKINSON ST	AMHERST, MA 01002
14B-52	40 DICKINSON ST	FUNGAROLI, SOPHIE ETAL	C/O VOLK, TODD & BEAUCHAMP, PIERRE	103 CRESCENT RD	LONGMEADOW, MA 01106
14B-26	214 MAIN ST	AMHERST COLLEGE TRUSTEES	COMPTROLLERS OFFICE	AMHERST COLLEGE	AMHERST, MA 01002
14B-31	229 MAIN ST	BENNING, CHRISTOPHER W & FIALA, LANA		229 MAIN ST	AMHERST, MA 01002
14B-30	257 MAIN ST	KING, ANN E		257 MAIN ST	AMHERST, MA 01002
14B-27	280 MAIN ST	AMHERST COLLEGE TRUSTEES	ATTN: COMPTROLLERS OFFICE	BOX 2221, AMHERST COLLEGE	AMHERST, MA 01002
14B-29	285 MAIN ST	JONES PROPERTIES LTD PARTNERSHIP		15A PRAY ST	AMHERST, MA 01002
14B-28	319-321 MAIN ST	CHEN, GORDON K C & URSULA F		16342 NIKKI LN	ODESSA, FL 33556-6002
14B-59	351 MAIN ST	GREENBAUM, LOUIS S & HILDA B		298 MONTAGUE RD	AMHERST, MA 01002

<i>Parcel ID</i>	<i>Parcel Address</i>	<i>Owner1</i>	<i>Owner2</i>	<i>Address</i>	<i>City/State/Zip</i>
14B-45	SEELYE ST	AMHERST COLLEGE TRUSTEES	ATTN: COMPTROLLERS OFFICE	BOX 2221, AMHERST COLLEGE	AMHERST, MA 01002
14B-33	22 SEELYE ST	THOMAS, JAMES & TARI N		22 SEELYE ST	AMHERST, MA 01002
14B-43	71 SPRING ST	RAGER, JOHN E III & CAZACU, DANIELA		71 SPRING ST	AMHERST, MA 01002
14B-34	82 SPRING ST	BEAUDRY, GARY & TERESA K		82 SPRING ST	AMHERST, MA 01002
14B-44	83 SPRING ST	ROGOWSKI, CHRISTIAN	MONAHIN, NONA	83 SPRING ST	AMHERST, MA 01002
14B-35	90 SPRING ST	GORDON, DANIEL L & EPSTEIN, CATHERINE A		90 SPRING ST	AMHERST, MA 01002
14B-49	97 SPRING ST	AMHERST COLLEGE TRUSTEES	ATTN: COMPTROLLERS OFFICE	AMHERST COLLEGE	AMHERST, MA 01002
14B-36	98 SPRING ST	98 SPRING ST LLC		15A EAMES AVE	Amherst, MA 01002
14B-38	104 SPRING ST	ROMER, ROBERT H & BETTY		104 SPRING ST	AMHERST, MA 01002
14B-39	122 SPRING ST	SARNA, JOHN D (POA)		450 SOUTH GULF RD	BELCHERTOWN, MA 01007
14B-227	18 WEBSTER ST	LEDERER, KAREN	SABEL, BRIAN M.	18 WEBSTER ST	AMHERST, MA 01002